

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF OKLAHOMA

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| RHONDA J. BURLEY, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | No. CIV-09-65-FHS-SPS |
| |) | |
| CAROLYN W. COLVIN ¹ , Commissioner |) | |
| Social Security Administration |) | |
| |) | |
| Defendant. |) | |

OPINION AND ORDER

Before the Court for its consideration is Plaintiff's Counsel's Motion for Relief Pursuant to Fed.R.Civ.P. 60(b)(6)(Dkt. No. 25) filed on June 25, 2013. Plaintiff's counsel seeks relief which would allow her to file her motion for attorney fees under 42 U.S.C. § 406(b)(1) within sixty days following her receipt of a Notice of Award issued by the Social Security Administration. The Court finds Plaintiff's counsel is entitled to the requested relief.

Attorney fees are awardable under 42 U.S.C. § 406(b)(1) when a social security claimant is awarded disability benefits following a remand from a federal district court. McGraw v. Barnhart, 450 F.3d 493, 496 (10th Cir. 2006). In such

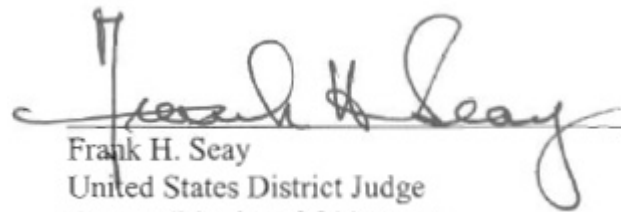
¹The Court has been informed by Defendant that on February 14, 2013, Carolyn W. Colvin became the Acting Commissioner of Social Security. Pursuant to Rule 25 (d) of the Federal Rules of Civil Procedure, Carolyn W. Colvin is automatically substituted for Michael J. Asture as the defendant in this action. Thus, this suit will proceed with this substitution in effect. See 42 U.S.C. Sec. 405 (g) ("Any action instituted in accordance with this subsection shall survive notwithstanding any change in the person occupying the office of Commissioner of Social Security or any vacancy in such office.")

circumstances, the fourteen-day period running from the date of judgment under Fed.R.Civ.P. 54(d)(2)(B)(i) will have expired and claimants, such as Plaintiff and her counsel herein, rely on Fed.R.Civ.P. 60(b)(6) to seek such fees well after the expiration of the fourteen-day period. Id. at 505. The McGraw Court noted, however, that “[a] motion for an award of fees under § 406(b)(1) should be filed within a reasonable time of the Commissioner’s decision awarding benefits.” Id.

On March 30, 2010, this Court remanded this action to the Commissioner for further administrative action pursuant to sentence four of 42 U.S.C. § 405(g). On or about February 5, 2013, Plaintiff and her counsel received notification of a favorable decision from the Administrative Law Judge determining her to be disabled since August 2, 2004. Plaintiff’s current counsel received the Plaintiff’s Notice of Award from the attorney who represented Plaintiff at the SSA on June 19, 2013. Plaintiff’s counsel filed the instant motion seeking relief under Fed.R.Civ.P. 60(b)(6) on June 25, 2013 which was five days after Plaintiff’s current counsel received the receipt of the Notice of Award. Thus, Plaintiff’s counsel is entitled to file her motion for attorney fees within a reasonable time of the receipt of the Notice of Award.

Plaintiff’s Counsel’s Motion for Relief Pursuant to Fed.R.Civ.P. 60(b)(6) (Dkt. No. 25) is granted and she is directed to file her motion for attorney fees within sixty days following her receipt of a Notice of Award issued by the Social Security Administration.

It is so ordered this 17th day of September, 2013.



Frank H. Seay
United States District Judge
Eastern District of Oklahoma